

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

Lourdes Lefevre et al.,  
Plaintiffs,  
v.  
Five Star Quality Care, Inc. et al.  
Defendant.

5:15-cv-01305-VAP-SPx

**Order GRANTING Motion for  
Approval of PAGA Settlement IN  
PART (Dkts. 76, 77)**

On November 30, 2020, Lourdes Lefevre ("Plaintiff") filed an unopposed Motion for Approval of PAGA Settlement ("Motion"). (Dkts. 76, 77). After considering all the papers filed in support of the Motion, the Court GRANTS the Motion IN PART.

**I. BACKGROUND**

Plaintiff is a former employee of Defendant Five Star Quality Care, Inc. During her employment with Defendant, she worked as a personal care giver for patients at a senior living center, including those with terminal illnesses and debilitating conditions like Alzheimer's Disease and dementia. (Dkt. 76, at 2). On February 17, 2015, Plaintiff sent the California Labor and Workforce Development Agency ("LWDA") a notice that Defendant allegedly violated the Labor Code. (*Id.*) On May 20, 2015, she filed a class action complaint, alleging labor code violations for unpaid wages, unpaid meal and

rest period premiums, failure to timely pay final wages, non-compliant wage statements, and unreimbursed business expenses. (*Id.*)

Based on these violations, Plaintiff brought (i) a representative action under California's Private Attorneys General Act ("PAGA") and (ii) a class action on behalf of other employees of Defendant who allegedly experienced the same violations. (Dkt. 1-1, at ¶19).

On November 12, 2019, the Court granted Defendant's Motion to Compel Arbitration with regard to Plaintiff's non-PAGA claims and stayed the PAGA claims pending completion of the arbitration. (Dkt. 75). The parties now request that the Court approve the proposed settlement under section 2699(l) of the California Labor Code. (Dkt. 76).

## II. LEGAL STANDARD

The California legislature enacted PAGA "to allow aggrieved employees, acting as private attorneys general, to recover civil penalties for Labor Code violations, with the understanding that labor law enforcement agencies were to retain primacy over private enforcement efforts." *Arias v. Superior Court*, 46 Cal. 4th 969, 980 (2009); *Baumann v. Chase Inv. Servs. Corp.*, 747 F.3d 1117, 1121 (9th Cir. 2014) ("If the California Labor and Workforce Development Agency ('LWDA') declines to investigate an alleged labor law violation or issue a citation, an aggrieved employee may commence a PAGA action against an employer 'personally and on behalf of other current or former employees to recover civil penalties for Labor Code violations.'"). An "aggrieved employee" is defined as "any person who was

1 employed by the alleged violator and against whom one or more of the  
2 alleged violations was committed.” Cal. Lab. Code § 2699(c).

3  
4 “An employee plaintiff suing [under PAGA] does so as the proxy or  
5 agent of the state’s labor law enforcement agencies.” *Arias*, 46 Cal. 4th at  
6 986. An action for civil penalties under PAGA “is fundamentally a law  
7 enforcement action designed to protect the public and not to benefit private  
8 parties.” *Id.* (quoting *People v. Pacific Land Research Co.*, 20 Cal. 3d 10, 17  
9 (1977)). “Because an aggrieved employee’s action under [PAGA] functions  
10 as a substitute for an action brought by the government itself, a judgment in  
11 that action binds all those, including nonparty aggrieved employees, who  
12 would be bound by a judgment in an action brought by the government.” *Id.*  
13 “Of the civil penalties recovered, 75 percent goes to the California Labor  
14 and Workforce Development Agency, leaving the remaining 25 percent for  
15 the ‘aggrieved employees.’” *Ochoa-Hernandez v. Cjaders Foods, Inc.*, No. C  
16 08-2073 MHP, 2010 WL 1340777, at \*1 (N.D. Cal. Apr. 2, 2010) (quoting  
17 Cal. Labor Code § 2699(i)).

18  
19 Further, section 2699(l)(2) states, “[t]he superior court shall review  
20 and approve any settlement of any civil action filed pursuant to this part. The  
21 proposed settlement shall be submitted to the agency at the same time that  
22 it is submitted to the court.” Cal. Lab. Code § 2699(l)(2). “A court has  
23 discretion to approve the settlement of PAGA claims if the settlement would  
24 be ‘fair.’” *Junhee Lee v. Esra Jung*, No. 15-cv-01529-HRL, 2016 U.S. Dist.  
25 LEXIS 136162, at \*2 (N.D. Cal. Sep. 29, 2016). “The court may consider  
26 factors such as the merits of the action, the maximum recovery the plaintiff

1 could obtain if the merits were decided in his favor, and ‘how and why [the]  
2 parties arrived at the settlement amount.’” *Hollis v. Weatherford US LP*, No.  
3 1:16-CV-00252-JLT, 2017 WL 131994, at \*2 (E.D. Cal. Jan. 12, 2017).

4  
5 The LWDA has suggested some guidelines for approving PAGA  
6 claims, which have been cited with approval by a number of courts:

7 when a PAGA claim is settled, the relief provided for under the  
8 PAGA [should] be genuine and meaningful, consistent with the  
9 underlying purpose of the statute to benefit the public and, in  
10 the context of a class action, the court [should] evaluate  
11 whether the settlement meets the standards of being  
12 fundamentally fair, reasonable, and adequate with reference to  
the public policies underlying the PAGA.

13 *Syed v. M-I, L.L.C.*, No. 112CV01718DADMJS, 2017 WL 714367, at \*13  
14 (E.D. Cal. Feb. 22, 2017) (internal quotations and citations omitted);  
15 *O’Connor v. Uber Techs., Inc.*, 201 F. Supp. 3d 1110, 1133 (N.D. Cal. 2016).  
16 In doing so, the Court may “consider factors such as the merits of the  
17 action, the maximum recovery the plaintiff could obtain if the merits were  
18 decided in his favor, and ‘how and why [the] parties arrived at the settlement  
19 amount.’” *Hollis*, 2017 WL 131994 at \*2.

20  
21 As other courts in this district have found, however, “the Act is  
22 surprisingly short on specifics,” and neither the California legislature, the  
23 LWDA, nor California courts have identified “the appropriate standard for  
24 approval of such a settlement.” *Flores v. Starwood Hotels & Resorts*  
25 *Worldwide, Inc.*, 253 F. Supp. 3d 1074, 1075 (C.D. Cal. 2017). As a result,  
26 “[f]ederal district courts, sitting in diversity, have often been left to their own

1 devices in this area of great importance to the citizens of California.” *Id.* at  
2 1075-76.

### 3 4 **III. DISCUSSION**

5 Plaintiff brought this PAGA action in a representative capacity. The  
6 parties propose an aggregate settlement amount of \$3,062,000.00, divided  
7 as follows:

- 8 • \$1,505,601.46 to the LWDA;
- 9 • \$501,867.16 to the Aggrieved Employees;
- 10 • \$22,550.00 in administration costs;
- 11 • \$1,020,666.67 in attorneys’ fees; and
- 12 • \$11,314.71 in litigation costs and expenses.

#### 13 14 **A. PAGA Settlement**

15 As discussed above, the Court adopts the “fair and reasonable”  
16 standard other courts have applied to review PAGA settlements. “A court  
17 has discretion to approve the settlement of PAGA claims if the settlement  
18 would be ‘fair.’” *See Junhee Lee v. Esra Jung*, 2016 U.S. Dist. LEXIS  
19 136162 at \*2 (citing *Nordstrom Commission Cases*, 186 Cal. App. 4th 576,  
20 581 (2010)). The court may consider factors such as the merits of the  
21 action, the maximum recovery the plaintiff could obtain if the merits were  
22 decided in his favor, and “how and why [the] parties arrived at the settlement  
23 amount.” *Hollis*, 2017 WL 131994 at \*2 (citing *Junhee Lee v. Esra Jung*,  
24 2016 U.S. Dist. LEXIS 136162 at \*4-5).

1 In the traditional PAGA settlement context, courts must review “the  
2 merits of the action [and] the maximum recovery the plaintiff could obtain” to  
3 ensure the LWDA and other potentially aggrieved employees, who are  
4 bound by the settlement, are not being short-changed. The Court finds the  
5 proposed settlement amount to be reasonable. The proposed settlement  
6 amount, \$3,062,000.00, represents 17% of the maximum possible  
7 settlement value. (See Dkt. 76, at 15 (“Plaintiff could have obtained a  
8 maximum of \$18 million in PAGA penalties assuming a 100% violation rate.  
9 Thus, Plaintiff’s \$3M settlement translates to almost 17% of the soaking wet  
10 total verdict value.”)). Other courts considering similar factual  
11 circumstances have approved similar settlements. See, e.g., *Rodriguez v.*  
12 *West Publ’g Corp.*, 2007 WL 2827379, at \*9 (C.D. Cal. Sept. 10, 2007)  
13 (approving settlement awarding 30% of maximum damages).

14  
15 The Court also finds the settlement is fair, reasonable, and adequate  
16 when considering “how and why [the] parties arrived at the settlement  
17 amount.” *Hollis*, 2017 WL 131994 at \*2. Here, the parties exchanged  
18 significant amounts of information in advance of the mediation. Indeed,  
19 Defendant provided Plaintiff: “(1) Plaintiff’s wage statements, personnel file,  
20 and payroll records; (2) Defendant’s handbooks in effect during the relevant  
21 limitations periods; (3) forms used by Defendant and its employees relevant  
22 to Plaintiff’s claims; (4) a sampling of employee schedules, (5) over five  
23 years’ worth of timekeeping data consisting of over 300,000 work weeks and  
24 approximately 180,000 pay periods for approximately 5,000 of Defendant’s  
25 employees; (6) over five years’ worth of payroll data for the same group of  
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1 employees; (7) additional statistics for the group of aggrieved employee.”  
2 (Dkt. 76, at 9).

3  
4 Plaintiff reviewed this information and evaluated “potential PAGA  
5 penalties that could be recovered, and the likelihood of recovering the same  
6 based on Defendant’s defenses to liability and the ability of the Court to  
7 award reduced penalties before entering mediation.” (Dkt. 76, at 10).  
8 Furthermore, there is no evidence of collusion; the settlement was reached  
9 as a result of arm’s length negotiation before an experienced mediator, with  
10 each side represented by counsel experienced in PAGA and wage and hour  
11 matters. (Dkt. 76, at 3). *See Wren v. RGIS Inventory Specialists*, No. C-06-  
12 05778 JCS, 2011 WL 1230826, at \*6 (N.D. Cal. Apr. 1, 2011),  
13 *supplemented*, No. C-06-05778 JCS, 2011 WL 1838562 (N.D. Cal. May 13,  
14 2011) (“An initial presumption of fairness is usually involved if the settlement  
15 is recommended by class counsel after arm's-length bargaining.” (internal  
16 quotations and citation omitted)).

17  
18 In sum, the Court finds the settlement is “consistent with the  
19 underlying purpose of the statute to [1] benefit the public,” *Syed*, 2017 WL  
20 714367 at \*13; (2) “protect the public”; and (3) not “benefit private parties,”  
21 *Arias*, 46 Cal. 4th at 986. Further, the Court finds the PAGA settlement  
22 amount is “fundamentally fair, reasonable, and adequate.” *Syed*, 2017 WL  
23 714367 at \*13.

**B. Attorneys' Fees**

When evaluating attorneys' fees, the Ninth Circuit has held that "the district court has discretion in common fund cases to choose either the percentage-of-the-fund or the lodestar method." *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002) (citing *In re Wash. Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1295–96 (9th Cir. 1994)). When using the percentage-of-the-fund method, "courts typically set a benchmark of 25% of the fund as a reasonable fee award, and justify any increase or decrease from this amount based on circumstances in the record." *Monterrubio v. Best Buy Stores, L.P.*, 291 F.R.D. 443, 455 (E.D. Cal. 2013); see *Paul, Johnson, Alston & Hunt v. Gaulty*, 886 F.2d 268, 272 (9th Cir. 1989). The percentage may be adjusted upward or downward based on (1) the results achieved; (2) the risks of litigation; (3) the skill required and the quality of work; (4) the contingent nature of the fee; (5) the burdens carried by counsel; and (6) the awards made in similar cases. *Monterrubio*, 291 F.R.D. at 455 (citing *Vizcaino*, 290 F.3d at 1048–50).

Here, Plaintiffs' Counsel seeks 33% of the total settlement fund, which is significantly higher than the Ninth Circuit's 25% "benchmark award" for attorneys' fees. *Hanlon*, 150 F.3d at 1029. Thus, before approving the proposed fee, the Court must evaluate it under the factors set forth in *Vizcaino*.

**1. Results Achieved**

Plaintiffs' Counsel have provided no evidence that it obtained an especially exemplary result. Here, the settlement amount obtained by



1 Plaintiffs' Counsel represents 17% of the maximum possible value, which is  
2 less than the settlement percentages in many of the cases Counsel cites to  
3 support its request for higher fees. See *Clayton v. Knight Transp.*, No. 1:11-  
4 CV-00735-SAB, 2013 WL 5877213, at \*7 (E.D. Cal. Oct. 30, 2013) (denying  
5 a request for one third of the common fund and awarding the benchmark  
6 where, among other things, the results achieved were "good" but not  
7 "exceptional" because class members were "anticipated to recover less than  
8 50% of their potential recovery"). Accordingly, this factor weighs against  
9 approving the proposed attorneys' fees award.

## 10 11 2. Risks of Litigation

12 Although Plaintiffs' Counsel did assume some degree of risk by  
13 representing Plaintiffs, Plaintiffs' Counsel have not shown that this case  
14 carries the type of extreme risk that would merit a significant departure from  
15 the 25% benchmark. Compare *Monterrubio*, 291 F.R.D. at 456–57 (finding  
16 case was not "extremely risky" although it was questionable whether the  
17 class could be certified, whether the plaintiff could prove an employer's  
18 policies violated labor code sections on a "knew or should have known"  
19 standard, and whether plaintiff could overcome an "exhaustion defense"),  
20 and *Hawthorne v. Umpqua Bank*, No. 11-CV-06700-JST, 2015 WL 1927342,  
21 at \*5 (N.D. Cal. Apr. 28, 2015) (holding the risk in a case did not merit an  
22 attorneys' fee award of 33% even though the class counsel "expended a  
23 significant amount of time and effort litigating this case over the past three  
24 years and undertook a major risk by taking it on a contingency basis."), with  
25 *Vizcaino*, 290 F.3d at 1048 (finding case "extremely risky" when, among  
26

1 other factors, plaintiffs lost twice in district court and there was absence of  
2 supporting precedent).

3  
4 Notably, the only case Plaintiffs' Counsel relies on, *Vizcaino*, is largely  
5 distinguishable. In that case, the plaintiffs' counsel requested a 3% increase  
6 in the Ninth Circuit benchmark on attorneys' fees from 25% to 28% after  
7 litigating the case for 11 years. *Vizcaino*, 142 F. Supp. 2d at 1304. The  
8 court found that counsel took on several risks with litigating the action,  
9 including: (1) the class members signed agreements with Microsoft waiving  
10 their rights to employee benefits; (2) there was no controlling law on the  
11 benefits waiver issue; (3) the class suffered multiple losses in the district  
12 court which resulted in multiple appeals before the Ninth Circuit, and; (4)  
13 Microsoft is one of the nation's most formidable companies, and Plaintiffs'  
14 Counsel worked with several law firms on the matter for several years which  
15 complicated their work. (*Id.*) Here, Plaintiffs' Counsel requests an even  
16 greater award than the award granted in *Vizcaino* (33%) after litigating this  
17 case for five years and defending one appeal before the Ninth Circuit.  
18 Moreover, while the Court recognizes the challenges of litigating a case  
19 during the COVID-19 pandemic, Plaintiffs' Counsel fails to describe any  
20 specific challenges that were faced with settling this case as a result of the  
21 pandemic. (Dkt. 76, at 19). Nevertheless, as the parties note, this case  
22 presented some complex and novel issues concerning the choice of law  
23 provision. Accordingly, this factor weighs slightly in favor of an upward  
24 deviation from the benchmark.

1           3. Skill and Quality of the Work

2           While the Court does not doubt Plaintiffs' Counsel are experienced  
3 and skilled litigators, they have not shown the kind of exceptional skill or  
4 quality of work to warrant a departure from the 25% benchmark. Thus, this  
5 factor weighs against approving the proposed attorneys' fees award.

6  
7           4. Contingent Nature of the Fee and Burdens Carried

8           "It is an established practice in the private legal market to reward  
9 attorneys for taking the risk of non-payment by paying them a premium over  
10 their normal hourly rates for winning contingency cases." *In re Washington*  
11 *Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d at 1299. Thus, whether  
12 Plaintiffs' Counsel have taken the case on a contingency fee basis must be  
13 considered when deciding to vary from the 25% benchmark. *Monterrubio*,  
14 291 F.R.D. at 457. Here, Plaintiffs' Counsel took this case on a contingency  
15 fee basis. Thus, this factor weighs slightly in favor of an upward deviation  
16 from the benchmark.

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18           5. Awards Made in Similar Cases

19           As noted above, 25% is the Ninth Circuit's "benchmark award for  
20 attorney[s'] fees." *Hanlon*, 150 F.3d at 1029. Plaintiffs' Counsel request the  
21 Court enhance the award, citing to cases in which courts have awarded  
22 attorneys' fees at or above one third of the total settlement fund. (See 76, at  
23 22-23). Plaintiffs' Counsel, nevertheless, have failed to show how any of  
24 those cases are similar to this one. See *Regino Primitivo Gomez, et al. v.*  
25 *H&R Gunlund Ranches, Inc.*, No. CV F 10-1163 LJO MJS, 2011 WL  
26 5884224 (E.D. Cal. 2011) (approving attorneys' fees award equal to 45% of

1 the settlement fund but which also included costs of administration as  
2 plaintiffs' counsel also acted as claims administrator). In fact, in cases  
3 where class members recovered a similarly low percentage award, the  
4 Court has found the result achieved does not justify a departure from the  
5 benchmark. *Hillman v. Lexicon Consulting, Inc.*, No. EDCV 16-01186-VAP-  
6 SPx, 2017 WL 10434013, at \*6 (C.D. Cal. Oct. 12, 2017). Therefore, this  
7 factor weighs against a departure from the 25% benchmark.

8  
9 6. Burdens Carried by Plaintiffs' Counsel

10 Plaintiffs' Counsel have provided information as to the costs in  
11 prosecuting this action, which, combined, account for \$11,202.91 of the total  
12 \$1,020,656.46 requested. (Dkt. 76-1, ¶ 37-38). The Court finds these  
13 expenses reasonable, but not overly burdensome. This factor also weighs  
14 against the proposed fee enhancement.

15  
16 7. Lodestar Cross-Check

17 Calculation of the lodestar, which measures the lawyers' investment of  
18 time in the litigation, provides a check on the reasonableness of the  
19 percentage award. Where such investment is minimal, as in the case of an  
20 early settlement, the lodestar calculation may convince a court that a lower  
21 percentage is reasonable. Similarly, the lodestar calculation can be helpful  
22 in suggesting a higher percentage when litigation has been protracted.  
23 Thus, while the primary basis of the fee award remains the percentage  
24 method, the lodestar may provide a useful perspective on the  
25 reasonableness of a given percentage award. *Vizcaino*, 290 F.3d at 1050.

1           “To inform and assist the court in the exercise of its discretion, the  
2 burden is on the fee applicant to produce satisfactory evidence—in addition  
3 to the attorney’s own affidavits—that the requested rates are in line with  
4 those prevailing in the community for similar services by lawyers of  
5 reasonably comparable skill, experience and reputation.” *Camacho v.*  
6 *Bridgeport Fin., Inc.*, 523 F.3d 973, 980 (9th Cir. 2008) (quoting *Blum v.*  
7 *Stenson*, 465 U.S. 886, 896 (1984)). Here, Plaintiffs’ Counsel report that its  
8 lodestar is \$490,640.00, based on a total of approximately 653.7 hours at  
9 hourly rates of \$500, \$800, and \$850 for each attorney on the matter and  
10 \$150.00-\$475.00/hour for the 15 hours spent by law clerks. (Dkt. 76-1, ¶  
11 35).

12  
13           After a review of Plaintiffs’ Counsel’s declarations, the Court  
14 concludes that the lodestar amount is reasonable considering the work  
15 performed and the prevailing rates in the community for attorneys of  
16 comparable skill, experience and reputation. Counsel provided supporting  
17 evidence as to the prevailing rates in the community for similar services by  
18 lawyers of reasonably comparable skill. (*Id.*, Ex. A-B). Further, Counsel  
19 have provided detail regarding the number of hours it spent on this case.

20  
21           Moreover, the fee Counsel seeks reflects a multiplier of 2.5 on the  
22 lodestar which is reasonable for a complex class action case. *See Hopkins*  
23 *v. Stryker Sales Corp.*, 11CV2786-LHK, 2013 WL 496358, at \*4 (N.D. Cal.  
24 Feb. 6, 2013) (“Multipliers of 1 to 4 are commonly found to be appropriate in  
25 complex class action cases.”). In the recent \$50 million settlement in  
26 *Spann*, Judge Olguin held that a multiplier of 3.07 was “well within the range

1 of reasonable multipliers.” *Spann v. J.C. Penney Corp.*, 211 F. Supp. 3d  
2 1244, 1265 (C.D. Cal. 2016); *see also Vizcaino*, 290 F.3d at 1052–1054  
3 (surveying multipliers in 23 class action suits and recognizing that courts  
4 applied multipliers of 1.0 to 4.0 in 83% of surveyed cases); *Parkinson v.*  
5 *Hyundai Motor Am.*, 796 F. Supp. 2d 1160, 1170 (C.D. Cal. 2010) (observing  
6 that “multipliers may range from 1.2 to 4 or even higher”).  
7

8 In sum, four of the *Vizcaino* factors weigh against departing from the  
9 25% attorneys’ fee award benchmark and two factors weigh in favor. In  
10 addition, Plaintiffs’ Counsel’s lodestar calculation figures are reasonable.  
11 The Court therefore finds that the facts of this case support a departure from  
12 the benchmark by 2% from 25% to 27%.  
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14 Accordingly, the Court DENIES Plaintiffs’ Counsel’s application for  
15 attorneys’ fees equal to 33% of the settlement fund (\$1,020,666.67).  
16 Instead, the Court APPROVES an attorneys’ fees award of 27% of the  
17 settlement fund (\$826,740.00), with the remainder of the settlement allotted  
18 to attorneys’ fees evenly divided between the LWDA and Aggrieved  
19 Employees.  
20

#### 21 IV. CONCLUSION

22 For the reasons stated above, the Court GRANTS the Motion IN  
23 PART. The Court APPROVES the proposed aggregate settlement amount  
24 of \$3,062,000.00. The Court DENIES the Motion as to the proposed award  
25 of attorneys’ fees.  
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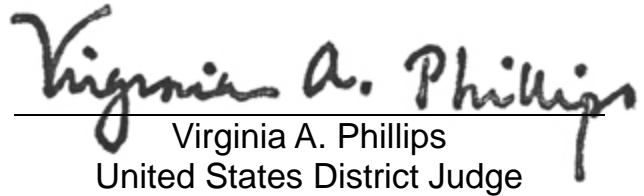
1 The Court APPROVES the settlement as follows:

- 2 • \$1,602,564.79 to the LWDA;
- 3 • \$598,830.50 to the Aggrieved Employees;
- 4 • \$22,550.00 in administration costs;
- 5 • \$826,740.00 in attorneys' fees; and,
- 6 • \$11,314.71 in litigation costs and expenses.
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8 **IT IS SO ORDERED.**

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10 Dated: 1/7/21

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12 Virginia A. Phillips  
13 United States District Judge  
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